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WALKER DIGITAL  
FIVE HIGH RIDGE PARK  
STAMFORD, CT 06905

EXAMINER
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THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/602,948

**Applicant(s)**

WALKER ET AL.

**Examiner**

Marissa Thein

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's "Remarks" deposited on October 31, 2003 has been considered.

Claims 1-63 remain pending in this application.

### ***Response to Arguments***

Applicant's arguments filed on October 31, 2003 have been fully considered but they are not persuasive.

Applicants' remark that Rose fails to teach the steps of: "receiving information concerning characteristics of shoppers; using the received information to select an image for viewing; and receiving the selected image", as recited in claim 63

The Examiner notes that Rose does teach the steps above. In col. 3, lines 40-42 and col. 3, lines 63-64), Rose discloses a customer inputs personal information which includes body measurements and a digital photographic of the customer's face that is entered into the computer system, wherein the system determines a body type based on the body measurement. Such inputting and entering into the computer system personal information and the system determining a body type are considered the "receiving information concerning characteristics of shoppers". Furthermore in Figures 3-4 and col. 7, lines 3, lines 58-62, Rose discloses the computer system which will generate a virtual mannequin of the customer's body which includes a digitized photograph of her face which shows the customer how her selected fashion will fit and look. Such virtual mannequin of the customer's body showing her digitized photograph of her face and the selected fashion are considered "using the received information to

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select an image of viewing” and the “receiving of the selected image”. Therefore, Applicants’ recitations in claim 63 fully “read on” this disclosure.

Applicants remark that “Claim 63 is written from the perspective of a participant in the shopper information system of embodiments of the present invention. A participant as defined in the specification....”.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., participant) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nonetheless, Rose discloses the system having applications for a retailer and manufacturer selling their products on the computer, etc. The system would aid in the success of interactive on-line home shopping by offering the home shopper what is traditionally considered as only in store services (col. 11, lines 13-22). Such system having applications for a retailer and manufacturer and aiding in an interactive on-line home shopping environment are considered the participant as defined in the Applicants' Specification.

Applicants remark that “Rose and Roberts are non-analogous art”.

In response to applicant's argument that Rose and Roberts are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the

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claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rose discloses an interactive electronic shopping system by a customer using a programmed computer, ED-ROM, television, Internet or other electronic medium such as video so as to interact and communicate with the system (col. 1, lines 53-56). Roberts discloses a method and apparatus for coordinating Internet communication to allow users to communicate (col. 3, lines 15-18). Furthermore, Roberts discloses a sales center comprising the salesperson having he second computer (Figure 6; col. 19, lines 18-20).

Applicants remark that "Examiner has failed to make out a *prima facie* case of a motivation to combine Rose with Roberts". Furthermore, Applicants remark that "Applicants are sincerely at a loss as to how the above statement provides a reason for combining Rose with Roberts such that the combination results in Applicants' claimed embodiments". Moreover, Applicants remark that "this motivation fails because it would not prompt one of ordinary skill in the art to combine Roberts or any other teaching with Rose in order to accomplish the stated goal.....Further, this motivation is very broadly stated and does not address any of the claim features..;.". Moreover, Applicants remark that "the combination would be obvious ....., has nothing to do with Applicants' claimed embodiments but is rather a summary of what Roberts itself discloses..... None of the pending claims recite 'coordinating Internet multimedia.....contents'. .....Thus, this assertion appears to have nothing to do with the claimed embodiments".

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The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, **or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.** See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the motivation to combine the references may be found in both Roberts (col. 1, lines 13-20) and Rose (col. 11, lines 8-9).

Applicant has provided no facts to challenge examiner's assertions. In the absence of facts, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants remark that Rose or Roberts, alone, or in combination does not teach or suggest "distributing an image of a shopper to a plurality of participants". Specifically, Applicants further remark that Roberts does not teach the above feature.

The Examiner notes that the combination of Rose and Roberts teach the distributing an image of a shopper to a plurality of participants. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through

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communication and the administrative view are considered distributing an image of a shopper to a plurality of participants.

Applicants remark that Roberts does not teach the kiosk and the panel of participants as recited in claim 45.

The Examiner respectfully acknowledges an easily recognizable word processing error in the previous office action. Where the office action states "...Roberts teaches the kiosk and the panel of participants as recited..." the text should read "...Roberts teaches the panel of participants as recited..." Roberts does not use the word *kiosk*. The rejection is based on the presence of a *kiosk* in *Rose*, as explained in the text found on pages 5-6 of the office action. The rejection states,

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Rose's method of shopping, to include the distributing of images and receiving responses to the image, as taught by Roberts, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Therefore, in response to Applicant's arguments against *Rose* and Roberts individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Nonetheless, *Rose* discloses the shopping information kiosk, as recited in the claim 45. In col. 2, lines 63-col.3, line 3, *Rose* discloses the computer software system which provided an interactive electronic shopping service employing a computer, the



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Internet or other electronic medium. The system can also be used as an in-store computer system that allows retailers and manufacturers to provide customers with a personalized shopping experience while freeing sales people. Such an in-store computer system is considered a kiosk. Rose does not disclose the panel of participants that response to the image distributed. Roberts teaches the panel of participants that response to the image distributed. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5,

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lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such combination of the shopping system of Rose and shared content being able to be manipulated by a party through communication and the administrative view of Roberts are considered the panel of participants that response to the image distributed.

Applicants' remark pertaining to claims 2,4-9, 14-17, 22-24, and 46 which depend from claims 1 and 45.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remarks pertaining to *prima facie* case of obviousness in regards to the combination of Rose with Roberts.

Applicants' remark that Rose does not teach "the shopper dons the selected garment"; "optical system to capture an image of the shopper"; and "digital camera", as recited in claims 6, 8, 9, and 46.

The Examiner notes again that Applicant's arguments against Rose and Roberts individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonetheless, Rose discloses "the shopper dons the selected garment". In col. 7, lines 58-62 and Figure 4, Rose discloses the system will generate a virtual mannequin of the customer's body including a digitized photograph of her face which shows the customer how her selected fashion will fit and look. Such

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photograph of the customer's body showing the customer how her selected fashion will fit and look is considered the shopper dons the selected garment. Furthermore, Rose does disclose the optical system to capture an image of the shopper and the digital camera. In col. 3, lines 17-19, Rose discloses the customer inputs information including a digital photograph. Furthermore in col. 3, lines 56-58, Rose discloses a photograph of her face taken with a digital camera that is digitized by the electronic fashion shopping system. Such inputting of a digital photograph and a digital camera, which are digitized by the system, are considered optical system capturing an image of the shopper and the digital camera. It is noted that the features upon which applicant relies are not commensurate with the scope of the claim(s). These claims were given the broadest reasonable interpretation in an effort to reduce the possibility that these claims, once issued, will be interpreted more broadly than is justified. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969).

Applicants remark that Roberts does not disclose the responses received from the plurality of participants, as recited in claim 15.

The Examiner notes again that Applicant's arguments against Rose and Roberts individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonetheless, the combination of Rose and Roberts the responses received from the plurality of participants. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view

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of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are considered the responses received from the plurality of participants.

Applicants remark that Roberts does not disclose transmitting a promotional offer to the shopper together with the received responses; the promotional offer is determined based on an analysis of though received responses, and transmitting the received responses to a retailer, as recited in claims 22-24.

The Examiner notes again that Applicant's arguments against Rose and Roberts individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonetheless, the combination of Rose and Roberts the discloses the transmitting a promotional offer to the shopper together with the received responses; the promotional offer is determined based on the analysis of received responses; and transmitting the received responses to a retailer. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an

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administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. Such shared content being able to be manipulated by a party through communication and the administrative view are considered the transmitting a promotional offer to the shopper together with the received responses; the promotional offer is determined based on the analysis of received responses; and transmitting the received responses to a retailer.

Applicants remark pertaining to claim 56, that Examiner has not met the burden of establishing a motivation to combine Rose with Roberts.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remarks pertaining to motivation to combine Rose with Robert.

Applicants remark that the combination of Rose and Roberts and neither Rose or Roberts, alone or in combination, does not teach or suggest "requesting a panel of participants"; and "receiving feedback regarding the garment based on responses from the panel of participants", as recited in claim 56.

The combination of Rose and Roberts teach and suggest "requesting a panel of participants"; and "receiving feedback regarding the garment based on responses from the panel of participants. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the

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representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are considered "requesting a panel of participants"; and "receiving feedback regarding the garment based on responses from the panel of participants".

Applicants remark that neither Rose nor Roberts teaches or suggests "capturing an image of a shopper", as recited in claim 59.

The Examiner notes that Rose and Roberts discloses capturing an image of a shopper. In col. 3, lines 17-19, Rose discloses the customer's inputs information

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including a digital photograph. Furthermore in col. 3, lines 56-58, Rose discloses a photograph of her face take with a digital camera that is digitized by the electronic fashion shopping system. Such inputting of a digital photograph which is digitized by the shopping system is considered capturing an image. Moreover, Roberts discloses the capturing an image. In col. 12, lines 9-13, Roberts discloses the shared content which can include application images, files, or application data among any other form of data that can be captured and displayed on the browser.

Applicants remark "that no proper motivation to combine Rose and Roberts and Kelly has been provided and thus a *prima facie* case of obviousness has been established for claims 3, 10-13, 18-21, 25-27, and 57". Applicants further remark that "Examiner provides no reason of why one of ordinary skill in the art would recognize to combine Rose and Roberts with Kelly..... Examiner's statement merely appears to state that the references should be combined because a desirable effect and a claimed feature would result". Moreover, Applicants remark that "This is not a proper finding of a motivation to combine.....".

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, **or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.** See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).



In this case, the motivation to combine the references may be found in Rose (col. 8, lines 58-90) and Roberts (abstract) and Kelly (col. 3, lines 47-50).

Applicant has provided no facts to challenge examiner's assertions. In the absence of facts, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants remark that Kelly is non-analogous art to either Rose or Roberts.

In response to applicant's argument that Rose and Roberts and Kelly are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rose discloses an interactive electronic shopping system by a customer using a programmed computer, ED-ROM, television, Internet or other electronic medium such as video so as to interact and communicate with the system

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(col. 1, lines 53-56). Roberts discloses a method and apparatus for coordinating Internet communication to allow users to communicate (col. 3, lines 15-18).

Furthermore, Roberts discloses a sales center comprising the salesperson having he second computer (Figure 6; col. 19, lines 18-20). Kelly discloses the marketability of the music (product) (col. 2, lines 52-55).

Applicants remark that Kelly fails to disclose the “feature of wherein the characteristics of the participants include subjective characteristics defined by the participants”, as recited in claim 12.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonetheless, the combination of Rose and Roberts and Kelly discloses the feature wherein the characteristics of the participants include subjective characteristics defined by the participants. In col. 3, lines 10-13, Kelly discloses survey participants are interviewed to determine their individual taste for specific muse genres, Such survey of participants to determine their individual taste are considered the characteristics of he participants include subjective characteristics defined by the participants.

Applicants remark that Kelly does not disclose “applying a rating to at least some of the participants on the basis of the received responses”, as recited in claim 25.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

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are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nonetheless, the combination of Rose and Roberts and Kelly discloses the applying a rating to at least some of the participants on the basis of the received responses. In col. 3, lines 10-20, Kelly discloses that the survey participants are initially interviewed to determine their individual taste for specific music genres. The field of selected listeners should have an interest in the style of music being surveyed. Furthermore in col. 3, lines 21-24, Kelly discloses the prospective survey participants may be interviewed to determine their compliance with other specific listener criteria. Such interview of the prospective participants to determine their taste and their compliance with other specific listener criteria and the field of selected listeners based on the interview are considered applying a rating to at least some of the participants on the basis of the received responses.

Applicants remark pertaining to claims 28-39, 42-43, 48-54, and 60-62, in regards to no motivation to combine and non-analogous art.

The Examiner directs Applicants' attention to Examiner's response to Applicant's previous remarks regarding claims 3, 10-13, 18-21, 25-27 and 57.

Applicants remark that the "combination of Rose, Roberts, and Kelly fails to teach the following feature of claim 28: transmitting the combined image to participants determined to be available".

The Examiner notes that the combination of Rose, Roberts, and Kelly does teach the transmitting the combined image to participants determined to be available. In col.

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11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to-many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are transmitting the combined image to participants determined to be available. Kelly was not cited for the transmitting features.

Applicants remark that the combination of Rose, Robert and Kelly fails to teach “capturing an image of a shopper who is wearing a garment; and transmitting the image to the panel of participants”.

The Examiner notes that the combination of Rose, Robert and Kelly teaches the “capturing an image of a shopper who is wearing a garment”. In col. 7, lines 58-62 and Figure 4, Rose discloses the system will generate a virtual mannequin of the customer's body including a digitized photograph of her face which shows the customer how her selected fashion will fit and look. Furthermore, Rose does disclose the optical system to capture an image of the shopper and the digital camera. In col. 3, lines 17-19, Rose discloses the customer inputs information including a digital photograph. Furthermore in col. 3, lines 56-58, Rose discloses a photograph of her face taken with a digital camera that is digitized by the electronic fashion shopping system. Such inputting of a digital photograph and a digital camera, which are digitized by the system, are considered capturing an image of the shopper who is wearing a garment. Moreover, Roberts discloses the capturing an image. In col. 12, lines 9-13, Roberts discloses the shared content which can include application images, files, or application data among any other form of data that can be captured and displayed on the browser.

The Examiner notes that the combination of Rose, Roberts, and Kelly teaches the transmitting the image to the panel of participants. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or

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the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are considered the transmitting the image to the panel of participants. Kelly was not cited for the capturing image and transmitting features.

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Applicants remark that the combination of Rose, Roberts, and Kelly fails to teach “distributing the image of the shopper to the selected panel of participants”, as recited in claim 48.

The Examiner notes that the combination of Rose, Roberts, and Kelly does teach the distributing the image of the shopper to the selected panel of participants. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to-many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The

audio communication can either initiate the communication or be used after the initiation of the visual communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are considered the distributing the image of the shopper to the selected panel of participants. Kelly was not cited for the distributing the image.

Applicants remark that neither Rose nor Roberts teach or disclose “using an optical system to capture an image of the shopper”, as recited in claim 54.

Furthermore, Applicants remark that Kelly also does not disclose “any means operable to capture an image of any person”.

The Examiner notes that the combination of Rose, Roberts and Kelly discloses the using an optical system to capture an image of the shopper. In col. 3, lines 17-19, Rose discloses the customer’s inputs information including a digital photograph. Furthermore in col. 3, lines 56-58 , Rose discloses a photograph of her face take with a digital camera that is digitized by the electronic fashion shopping system. Such inputting of a digital photograph which is digitized by the shopping system is considered using an optical system to capture an image of the shopper. Moreover, Roberts discloses using an optical system to capture an image. In col. 12, lines 9-13, Roberts discloses the shared content which can include application images, files, or application data among any other form of data that can be captured and displayed on the browser. In regards to Kelly, it was cited for the using an optical system to capture an image.



Applicants remark that the combination of Rose, Roberts, and Kelly fails to teach “receiving a message that includes an image of a shopper”, as recited in claim 60.

The Examiner notes that the combination of Rose, Roberts, and Kelly does teach the receiving a message that includes an image of a shopper. In col. 11, lines 45 – col. 12, line 23, Roberts discloses that in a session, the shared content is displayed in the user view of the user computer by the browser, while the shared content is displayed on the second computer within the sales view. The user interface of the second computer or the sales view contains a representation of the user view. When the shared content in the user or the representation of the user view is manipulated by one party through communication, the shared content of the other party's view will be updated. The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser. In addition to the sales view and user view, other views can also be implemented by the applet such as an administrative view. The administrative view displays information such as the structure of the sales force, reports, real-time monitoring of the communications, queue structure and status. The communication can be between more than one user computer and more than one second computer, thus enabling many-to-one, one-to many, or many-to-many communication (col. 5, lines 9-13). Moreover, Roberts discloses a visual communication and audible communication across a network between the user and the second computer (col. 5, lines 9-13; col. 5, lines 52-54). The audio communication can either initiate the communication or be used after the initiation of the visual

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communication between the user computer and the second computer (col. 5, lines 62-67). Such shared content being able to be manipulated by a party through communication and the administrative view are considered the receiving a message that includes an image of a shopper. Kelly was not cited for the receiving of a message that includes an image of a shopper.

Applicants remark that "the motivation to combine Gottsman with Rose, Roberts, and Kelly is not sufficient to meet Examiner's burden of establishing a *prima facie* case of obviousness for claims 41 and 42". Furthermore, Applicants remark that "This is insufficient as a motivation to combine since it does not explain....knowledge in the art would have motivated one of ordinary skill in the art to make the proposed combination.....". Moreover, Applicants remark that "such a statement is prohibited by case law because it is based on hindsight".

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, **or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.** See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the motivation to combine the references may be found in both Rose (col. 8, lines 58-90) and Roberts (abstract) and Kelly (col. 3, lines 47-50) and Gottsman (col. 2, lines 1-3).

Applicant has provided no facts to challenge examiner's assertions. In the absence of facts, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicants remark that "the additional grounds that Gottsman is non-analogous art to Rose, Roberts, and Kelly" in regards to claims 41 and 42.

In response to applicant's argument that Gottsman, Rose, Roberts and Kelly are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rose discloses an interactive electronic shopping system by a customer using a programmed computer, ED-ROM, television, Internet or other electronic medium such as video so as to interact and communicate with the system (col. 1, lines 53-56). Roberts discloses a method and apparatus for coordinating Internet communication to allow users to communicate (col. 3, lines 15-18). Furthermore, Roberts discloses a sales center comprising the salesperson having he second computer (Figure 6; col. 19, lines 18-20). Kelly discloses the marketability of the music (product) (col. 2, lines 52-55). Gottsman discloses a system for web-based comparison shopping (col. 1, lines 55-56).

Applicants remark pertaining to claim 47, in regards to improper motivation and non-analogous art.

The Examiner directs Applicants attention to the Examiner's response to Applicant's previous remark regarding claims 41 and 42.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 63 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S.**

**Patent No. 5,930,769.** Rose discloses a method for participating in a shopper information system (col. 1, lines 53-57; col. 1, line 65-col. 2, line 2) comprising: receiving information concerning characteristics of shoppers (col. 1, lines 57-64; col. 3, line 18-col. 4, line 9); using the received information to select an image for viewing (col. 1, lines 57-64; col. 3, line 40 – col. 4, line 24; Figures 1-4); and receiving the selected image (col. 1, lines 57-64; col. 3, line 40 – col. 4, line 24; Figures 1-4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-2, 4-9, 14-17, 22-24, 44-46, 55-56, and 58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,930,769 to Rose in view of U.S. No. Patent 6,295,551 to Roberts et al.**

Regarding claims 1, 44-45 and 55-56, Rose discloses a method, system, and article of manufacturing comprising a computer usable medium having computer readable program code means for operating a shopper information system (col. 1, lines 53-64; col. 3, lines 10-17), comprising: generating an image of a shopper (col. 1, lines

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53-64; col. 3, lines 18-20; col. 3, lines 40-62); selecting a garment to be included in the image (col. 1, lines 57-63; col. 3, line 63-col. 4, line 24; Figures 1-4); the shopper dons the selected garment (col. 1, lines 57-63; col. 3, line 63-col. 4, line 24; Figures 1-4); the image of the selected garment is combined with an image of the shopper (col. 1, lines 57-63; col. 3, line 63-col. 4, line 24; col. 7, lines 44-62; Figures 1-4) ; optical system to capture an image of the shopper (col. 3, lines 19-20; col. 3, lines 56-59); digital camera (col. 3, lines 56-59). However, Rose does not disclose requesting a panel of participants; distributing the image to participants; and receiving responses to the image from the participants. Rose discloses a system that shows analysis of fashion suggestions based on the customer's body type (col. 8, lines 58-60). On the other hand, Roberts teaches the requesting a panel of participants; distributing the image to a plurality of participants (col. 3, line 58 – col. 4, line 3; col. 5, lines 10-17) and receiving responses to the image from the plurality of participants (col. 4, lines 4-51).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Rose's method of shopping, to include the distributing of images and receiving responses to the image, as taught by Roberts, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it

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provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Regarding claims 2, 4, 14-17, and 22-24 (which discloses all of the limitation of claim 1), Roberts teaches the processing of received responses; transmitting the processed responses to the shopper; providing the received responses to the shopper substantially immediately upon receiving the responses; accumulating the responses; and presenting the accumulated responses to the shopper and transmitting the accumulated responses to a shopper terminal. Furthermore, Roberts teaches the transmitting a promotional offer to the shopper (col. 2, lines 59-61); the offer is determined based on an analysis of the received responses (col. 11, lines 53 – col. 12, lines 14); transmitting the received responses to a retailer (col. 16, lines 40-67; col. 20, lines 37-43).

Regarding 5-9 and 58-59 (which discloses all of the limitation of claims 1 and 56), Rose discloses logging on to a shopping website; selecting a garment to be included in the image (col. 1, lines 53-64; col. 3, lines 63 – col. 4, line 24; Figures 1-3); the shopper dons the selected garment (col. 1, lines 53-64; col. 6, line 65 – col. 7, line 23; col. 7, lines 44-67; Figures 1-3); the selected garment is combined with an image of the shopper (col. 1, lines 53-64; col. 3, lines 40-62; col. 6, line 65 – col. 7, line 23; col. 7, lines 44-67; Figures 1-3); an optical system to capture an image of the shopper (col. 3, lines 18-20; col. 3, lines 56-62); and a digital camera (col. 3, lines 18-20; col. 3, lines 56-62).

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Regarding claim 45, Rose discloses a shopper information kiosk comprising: a kiosk structure (electronic medium); image means, for convenient an image to digital image data; a memory for storing the digital image data; a processor connected to the memory; communication means for connecting the processor to a data network; input means for providing shopper input to the processor; and a display for displaying information to a shopper; and the processor being programmed to control the image means to capture an image of the shopper (col. 2, line 53 – col. 3, line 63). However, Rose does not disclose the panel of participants that responses to the image distributed. On the other hand, Roberts teaches the panel of participants, as recited in the claims. (Col. 5, lines 10-18)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the shopper information kiosk of Rose, to include the panel of participants, as taught by Roberts, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Regarding claim 46 (which discloses all the limitation of claim 45), Rose discloses a digital camera (col. 3, lines 18-20; col. 3, lines 56-62).



**Claims 3,10-13, 18-21, 25-27, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over as U.S. Patent No. 5,930,769 to Rose and U.S. Patent No. 6,295,551 to Roberts applied to claims 1, 28 and 56 above, and further in view of U.S. Patent No. 5,913,204 to Kelly.** Rose and Roberts provide the invention substantially as recited, however, the combination does not provide the performing a statistical analysis of the received responses; calculating respective percentages for categories the received responses; assembling the participants based on the received input; the characteristics of the participants include demographic and subjective characteristics of the participants; selecting a panel of participants from a pool of participants; generating a question to be distributed to the participants; the responses include a selection of one or two alternatives posed by the question; the responses includes a selection of one of a range of alternatives posed by the question; the responses include open-ended text responses; providing an offer to the participants; applying a rating to some participants on the basis of the received responses; and providing a benefit to the participants on the basis of the applied rating. The combination of Rose and Roberts discloses the analysis of fashion suggestion based on the customers' image (Rose col. 8, lines 58-60). Furthermore, the combination further discloses communication between multiple users and multiple representatives may conduct a single conference (Roberts abstract).

Kelly, on the other hand, teaches performing a statistical analysis of the received responses (col. 6, lines 24-67); calculating respective percentages for categories the received responses (col. 6, lines 24-67); assembling the participants based on the

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received input (Figure 5, col. 1, line 66-col. 2, line 12); the characteristics of the participants include demographic and subjective characteristics of the participants (col. 2, lines 59-64); selecting a panel of participants from a pool of participants (col. 3, lines 10-36); generating a question to be distributed to the participants (col. 3, line 54 – col. 4, line 65); the responses include a selection of one or two alternatives posed by the question (col. 3, line 58 – col. 4, line 65); the responses includes a selection of one of a range of alternatives posed by the question (col. 3, line 58 – col. 4, line 65); the responses include open-ended text responses (col. 3, line 58 – col. 4, line 65); providing an offer to the participants (claim 26); applying a rating to some participants on the basis of the received responses (col. 6, lines 24-67); and providing a benefit to the participants on the basis of the applied rating (col. 6, lines 24-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of the combination of Rose and Roberts, to include the performing of statistical analysis of the received responses and the assembling, selecting, and rating of participants, as taught by Kelly, in order to provide prospective participants who comply with the defined criteria (Kelly col. 3, lines 47-50).

**Claims 28-39, 42-43, 48-54, and 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over as U.S. Patent No. 5,930,769 to Rose in view of U.S. Patent No. 6,295,551 to Roberts and further in view of U.S. Patent No. 5,913,204 to Kelly.**

Regarding claim 28, Rose discloses the method for operating a shopper information network (col. 3, lines 10-17) comprising: logging on to a shopping website

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(col. 3, lines 10-38); retrieving a shopper image that represents a shopper (col. 3, line 40-col. 4, line 9); selecting a garment (col. 4, lines 10-24; col. 7, lines 44-67); combining an image of the selected garment with the shopper image to form a combined image (col. 3, line 40 – col. 4, line 25; col. 7, lines 44-67).

However, Rose does not disclose the requesting a panel of participants; defining desired characteristics of the panel of participants; determining availability of participants who match the defined desired characteristics; transmitting the combined image to participants determined to be available; receiving responses from participants to whom the combined image was transmitted; processing the received responses; and transmitting the processed responses to the shopper. Roberts, on the other hand, teaches transmitting the combined image to participants determined to be available; receiving responses from participants to whom the combined image was transmitted; processing the received responses; and transmitting the processed responses to the shopper. (See col. 3, lines 15-65; col. 5, line 10-17)

However, the combination of Rose and Roberts does not provide the requesting a panel of participants; defining desired characteristics of the panel of participants; and determining availability of participants who match the defined desired characteristics. Kelly, on the other hand, teaches the requesting a panel of participants; defining desired characteristics of the panel of participants; and determining availability of participants who match the defined desired characteristics. (Figure 5, col. 1, line 66-col. 2, line 12; col. 2, lines 59-64; col. 3, lines 10-36)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Rose's method of shopping, to include the distributing of images and receiving responses to the image, as taught by Roberts, to further include the panel of participants, as taught by Kelly, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Regarding claims 29-33 (which discloses all the limitation of claim 28), Roberts teaches calculating respective percentages for categories of the received responses and wherein the calculated percentages are presented to the shopper; the response are open-ended text response; defining a query and transmitting the query to the participants with the combined image; selecting the query from a menu; and entering text characters via a key board. (Col. 3, lines 31-50; col. 3, line 57 – col. 4, line 65; col. 5, lines 9-17; col. 5, lines 38-67).

Regarding claims 34-36 (which disclose all the limitation of claim 28), Rose discloses selecting a second garment; the combined image includes and image of the selected second garment (col. 1, lines 53-64; col. 3, lines 18-20; col. 3, lines 40-62); the shopper image is a virtual model that represents the shopper (col. 3, lines 18-62); and

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the shopper image is derived from at least one photograph of the shopper (col. 3, lines 19-20; col. 3, lines 56-59).

Regarding claim 37, Rose discloses a method of operating a shopper information system comprising capturing an image of a shopper who is wearing a garment (Figures 1-4; col. 1, lines 57-64; col. 3, line 64 – col. 4, line 24). However, Rose does not disclose defining a panel of participants; transmitting the image to the panel of participants; receiving responses from the participants; and presenting the responses to the shopper. On the other hand, Roberts teaches the defining a panel of participants; transmitting the image to the panel of participants; receiving responses from the participants; and presenting the responses to the shopper. (See col. 3, lines 15-65; col. 5, line 10-17) However, the combination of Rose and Roberts does not provide the defining a panel of participants. Kelly, on the other hand, teaches the defining a panel of participants. (Figure 5, col. 1, line 66-col. 2, line 12; col. 2, lines 59-64; col. 3, lines 10-36)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Rose's method of shopping, to include the panel of participants, transmitting the image to the participants, and receiving and presenting the responses to the shopper, as taught by Roberts, and to further include the defining a panel of participants, as taught by Kelly, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the

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communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Regarding claims 38-39, and 42-43 (which discloses all the limitation of claim 37), Roberts teaches the responses are presented to the shopper in the form of a statistical analysis of the response; the response are divided into categories and the statistical analysis includes percentages that correspond to the categories; entering a query and transmitting the query to the participants with the image; the presenting step is performed substantially immediately after the receiving step (col. 3, lines 31-50; col. 4, lines 5-43; col. 5, lines 9-17; col. 5, lines 38-67).

Regarding claim 48, Rose discloses a method for operating a shopper information system comprising generating an image of a shopper (col. 1, lines 57-64; col. 4, lines 18-62). However, Rose does not disclose the storing profiles for each participant for each participant of a pool of participants; receiving a request for a panel of participants; the request specifying at least one participants characteristics; selecting a panel of participants based on the stored profiles and characteristics; and distributing the image of the shopper to the selected panel of participants. Roberts, on the other hand, teaches receiving a request for a panel of participants and the distributing the image of the shopper to the selected panel of participants (col. 3, lines 15-65; col. 5, lines 10-18). However, the combination Rose and Roberts does not provide the storing of profiles for each participants; request specifying the participant characteristics; and the selecting of a panel of participants based on the profiles and characteristics. Kelly,

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on the other hand, teaches the storing of profiles for each participants; request specifying the participant characteristics; and the selecting of a panel of participants based on the profiles and characteristics. (Figure 5, col. 1, line 66-col. 2, line 12; col. 2, lines 59-64; col. 3, lines 10-36)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Rose, to include the requesting for a panel and distributing the image to the panel, as taught by Roberts, and to further include the selection of participants based on the profiles and characteristics, as taught by Kelly, in order to provide a method for coordinating Internet multimedia communication such that two or more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

Regarding claims 49-52 (which discloses all the limitation of claim 48), Roberts teaches the receiving of responses to the image from the participants; providing feedback to the shopper based on the received responses; the generating the step is performed before the receiving step; and the receiving step is performed before the generating step (col. 3, lines 31-50; col. 4, lines 5-43; col. 5, lines 9-17; col. 5, lines 38-67).

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Regarding claim 53-54 (which discloses all the limitation of claim 48), Rose discloses storing a profile for the shopper and using an optical system to capture an image of the shopper (col. 3, lines 118-62).

Regarding claims 60-62, Rose discloses a method for participating in a shopper information system (col. 1, lines 53-57; col. 1, line 65-col. 2, line 2), comprising the image of a shopper (col. 3, lines 18-62; Figure 1) and the receiving information concerning characteristics of the shopper (col. 3, line 18-col. 4, line 9; Figures 1-4). However, Rose does not disclose the receiving an invitation to participate in a panel; responding to the invitation; the receiving a message; responding to the message; and responding to the message includes selecting a check box. Roberts, on the other hand, teaches the receiving a message and the responding to a message (col. 3, lines 15-22; col. 5, lines 52-67; claims 19 and 28); and the responding to message includes selecting a check box (col. 17, lines 1-13).

The combination of Rose and Roberts does not provide the receiving an invitation to participate in a panel and responding to the invitation. Kelley, on the other hand, teaches receiving an invitation to participate in a panel and responding to the invitation (col. 1, line 66-col. 2, line 23; claim 10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Rose to include the receiving and responding to message, as taught by Roberts, and to further include the receiving and responding to an invitation to participate in a panel, as taught by Kelly, in order to provide a method for coordinating Internet multimedia communication such that two or



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more users can view and modify a copy of the same multi-media contents, where any modifications made by one user are subsequently viewed by a second user or other users, as well as enhancing the communication by supplementing any visual communication with audio communication (Roberts col. 1, lines 13-20). Thus, it provides customer service that personalizes and simplifies the shopping process (Rose col. 11, lines 8-9).

**Claims 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over as U.S. Patent No. 5,930,769 to Rose in view of U.S. Patent No. 6,295,551 to Roberts and in view of U.S. Patent No. U.S. Patent No. 5,913,204 to Kelly as applied to claim 37 above, and further in view of U.S. Patent No. 6,134,548 to Gottsman.** Rose, Roberts, and Kelly provide the invention substantially, as recited, however, the combination does not provide a product identifier code and the scanning a bar code that represents the product identifier. Gottsman, on the other hand, teaches the product identifier and the scanning of a bar code (abstract, summary). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Rose, Roberts and Kelly to have include the product identifier code and the scanning of a bar code, as taught by Gottsman, in order to find the availability and pricing information of the product (Gottsman col. 2, lines 1-3).

**Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,930,769 to Rose in view of U.S. No. Patent 6,295,551 to Roberts et al. as applied to claim 45, and in further view of U.S. Patent No. 6,134,548 to Gottsman.** Rose and Roberts provide the invention substantially, as recited, however,

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the combination does not provide a scanner connect to the processor for entering product information. Gottsman, on the other hand, teaches the scanner, as recited in the claim (abstract, summary). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Rose and Roberts to have include the scanner, as taught by Gottsman, in order to find the availability and pricing information of the product (Gottsman col. 2, lines 1-3).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

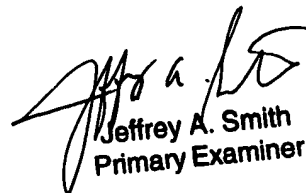
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:30-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mtot  
January 26, 2004



Jeffrey A. Smith  
Primary Examiner